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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,374	03/12/2004	Anthony Argila	ARGILA-CELL WEEP-240101	8878
4988	7590	08/07/2007	EXAMINER	
ALFRED M. WALKER 225 OLD COUNTRY ROAD MELVILLE, NY 11747-2712			CAJILIG, CHRISTINE T	
			ART UNIT	PAPER NUMBER
			3637	
			MAIL DATE	DELIVERY MODE
			08/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/800,374	<b>Applicant(s)</b> ARGILA, ANTHONY	
	<b>Examiner</b> Christine T. Cajilig	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17, 19-21 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-21 and 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/21/07 has been entered.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "foundation wall" as claimed in claims 1, 11, 21, and 41.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 11, and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. The language of "the bottom course of masonry elements resting on a foundation wall *without flashing*" (emphasis added) and "at least one drainage weep hole channel *in* a top surface of said foundation wall" (emphasis added) is deemed new matter and has not been originally claimed or disclosed. (1) The specification does not disclose that Applicant's *single* wythe wall does not have flashing. On page 13, lines 9-16 and on page 20, lines 25-27 to page 21, line 1, the specification states that the product "does not require a double wythe base course with flashing." The specification does not state that the single wythe wall assembly shown in Figure 1 of the disclosure has no flashing. (2) The specification does not contain support for the language of "at least one drainage weep hole channel *in* a top surface of said foundation wall." The specification lacks antecedent basis for the term "foundation." Moreover, the specification does not define the structure of the drainage weep hole channel nor does the specification make any reference to a drainage channel in the drawings by designating a reference numeral to the drainage channel. Page 20, lines 11-24 appears to define the drainage, however, it states that "water...freely escapes through a drainage weep hole channel formed, for example as a standard drainage weep hole at the base of the hollow cell of each masonry block." This appears to define that the drainage weep hole channels are formed at a base of each hollow block and not "*in* a top surface of said foundation wall" (emphasis added) as claimed. As best understood, it appears that the drainage channel is either formed at the base of the hollow cell each masonry block as described in page 20 or that the drainage channel is a separate element place, acting like a flashing to facilitate

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drainage) on a top surface of a foundation wall as shown in Figure 1 (Note that the "drainage weep hole channel" sticks up and out past an edge of the foundation. One would only gather that the drainage weep hole channel is a separate element).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 utilizes a closed transitional phrase of "consisting of." Accordingly, all elements of the invention must be present in the claim. The claim, amongst other things, does not currently include the mortar that is present between each course and adjacent blocks.

Claims 12, 13, and 15 appears to contain a double inclusion of the limitation "each upwardly extending water-permeable body." This limitation has already been disclosed claim 11.

Claim 14 appears to contain a double inclusion of the limitation "each body." This limitation has already been disclosed claim 11.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-17, 19-21, and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sourlis (US 2004/0182037 A1), herein referred to as Sourlis '037 in view of Sourlis (US 5230189), herein referred to as Sourlis '189.

Regarding claim 1, Sourlis '037 discloses a device in combination with and for protecting weep hole channels, draining water and directing mortar droppings/debris from a single wythe wall comprising said single wythe wall (14) composed of a plurality of structural masonry elements (16) having multiple courses (14-1, 14-2) including a bottom course (14-1), each masonry element forming at least one hollow inner cell (34), the bottom course of masonry elements resting on a foundation wall (18) without flashing and having inner cells communicating through at least one drainage weep hole channel (24, 28, 48) on a top surface of said foundation wall; a separate, upwardly extending water-permeable body (30) in each hollow recess cell in the bottom course masonry elements of said wall to permit water to pass through and prevent passage of mortar and other debris; each of said upwardly extending water-permeable bodies having a lower end (a) covering the drainage weep hole channel (28) and a transverse cross section which decreases upwardly from said lower end (a) to allow falling of the mortar and other debris in the respective inner hollow recess cells onto a surface around each of said upwardly extending water-permeable bodies but at the same time to prevent blockage of said drainage weep hole, whereby water in each of the inner cells of masonry blocks of the single wythe wall can flow through a respective one of

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said upwardly extending water-permeable bodies into the weep hole channel and outside of the single wythe wall, but does not disclose that the lower end of the water-permeable body substantially filling a cell area of the hollow recesses in which the water-permeable body is placed. However, Sourlis '189 discloses a mortar and debris collection device and system wherein a water-permeable body (24) has a lower end that is substantially filling a hollow recess area (16). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify Sourlis '037 to have the lower end of the water-permeable body substantially filling a cell area of the hollow recesses in which the water-permeable body is placed as taught by Sourlis '189 to properly block the weep hole openings from mortar and debris and to allow water to migrate through the water-permeable bodies to a drain outlet (Col 3, Ln 4-9). Sourlis '037 as modified by Sourlis '189 must read on the claimed invention because Sourlis '037 as modified by Sourlis '189 has what is disclosed in Applicant's specification and the element 24 of Sourlis '037 appears to be the same as Applicant's "drainage weep hole channel." As such, Sourlis '037's member 24 which rests on the foundation wall 18 reads on the drainage weep hole channel or provides the drainage weep hole channel and would not constitute a flashing and would be equivalent to Applicant's drainage channel.

Regarding claims 11 and 21, Sourlis '037 discloses a single wythe wall, consisting of the combination of a plurality of structural masonry elements (16) formed into rows (14-1, 14-2) with a bottom row (14-1), and subsequent rows placed over said bottom row, each structural element forming at least one inner hollow cell (34) in said

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bottom row communicating outside through at least one drainage weep hole channel (24, 28, 48) on a top surface of a foundation wall (18); said bottom row resting on said foundation wall (18) without flashing; a separate device (30, Par 0042) for draining water from each said inner hollow cell in said bottom row having a plurality of passages such as to permit water to pass through said passages and to prevent passing of mortar and other debris through said passages; each device being an upwardly extending water-permeable body (30) having a transverse dimension section which decreases upwardly from a lower transverse cross section (a) in direct contact with the drainage weep hole channel, to allow and/or direct falling of the mortar and other debris onto a surface surrounding each upwardly extending water-permeable body but at the same time to prevent falling of mortar and other debris in the respective inner hollow recess cells into the drainage weep hole channel; whereby water in the inner hollow cells can flow through each said body into the drainage weep hole channel and outside of the single wythe wall, but does not disclose that the lower transverse cross section of the water-permeable body covers substantially all of the drainage weep hole channel and a bottom of said body filling substantially all of a cross section of the hollow cell.

However, Sourlis '189 discloses a mortar and debris collection device and system wherein a water-permeable body (24) has a lower transverse section that is covering substantially all of the drainage weep hole channel (22) and a bottom of said body filling substantially all of a cross section of a hollow cavity (16). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the Applicant's invention to modify Sourlis '037 to have the lower transverse cross section of the water-



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permeable body covering substantially all of the drainage weep hole channel and a bottom of said body filling substantially all of a cross section of the hollow cell as taught by Sourlis '189 to properly block the weep hole openings from mortar and debris and to allow water to migrate through the water-permeable bodies to a drain outlet (Col 3, Ln 4-9). Moreover, the method steps set forth in claim 21 would be an obvious method of draining a single wythe wall of the structure as claimed in claim 11. Sourlis '037 as modified by Sourlis '189 must read on the claimed invention because Sourlis '037 as modified by Sourlis '189 has what is disclosed in Applicant's specification and the element 24 of Sourlis '037 appears to be the same as Applicant's "drainage weep hole channel." As such, Sourlis '037's member 24 which rests on the foundation wall 18 reads on the drainage weep hole channel or provides the drainage weep hole channel and would not constitute a flashing and would be equivalent to Applicant's drainage channel.

Regarding claims 2 and 12, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said upwardly extending water-permeable bodies can have a pyramidal shape (Par 0042) which is tapered upwardly to increase the inner surface cell area for more room of each of said upwardly extending water-permeable bodies for collection of the mortar and other debris.

Regarding claims 3 and 13, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said upwardly extending water-permeable bodies can have a conical shape (Par 0042)

which is tapered upwardly to increase the inner surface hollow cell area of each of said structural masonry elements for collection of the mortar and other debris.

Regarding claims 4 and 14, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said bodies can have a truncated pyramidal shape (Par 0042).

Regarding claims 5 and 15, Sourlis '037 already modified by Sourlis '189 discloses the structure as discussed above, but does not disclose that each of said upwardly extending water-permeable bodies has a truncated tapered conical shape. However, it would have been an obvious matter of design choice to modify the water-permeable body of Sourlis '037 already modified by Sourlis '189 to have a truncated tapered conical shape since such a modification would have involved a mere change in the shape of the components. A change in shape is generally recognized as being within the level of ordinary skill in the art absent persuasive evidence that the particular configuration of the claimed water-permeable device was significant. In addition, the shaped as claimed would act similar to the other tapered shapes of the water-permeable body. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Regarding claims 6 and 16, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above, but does not disclose that each of said upwardly extending water-permeable bodies includes a plurality of members of upwardly decreasing cross section. However, Sourlis '189 also disclose that a water permeable member can have a plurality of members of upwardly decreasing cross section (72a, 72b; Figure 10). Therefore, it would have been obvious to a person

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having ordinary skill in the arts at the time of the Applicant's invention to modify the water-permeable body of Sourlis '037 already modified by Sourlis '189 to have a plurality of members of upwardly decreasing cross section as taught by Sourlis '189 to yield protrusions that would help break up the mortar and other debris falling thereon.

Regarding claims 7 and 17, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each of said upwardly extending water-permeable bodies has a height sufficient to extend above the bottom course and into a next course as shown in Figure 1.

Regarding claims 9 and 19 Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each said body is fibrous (Par 0042).

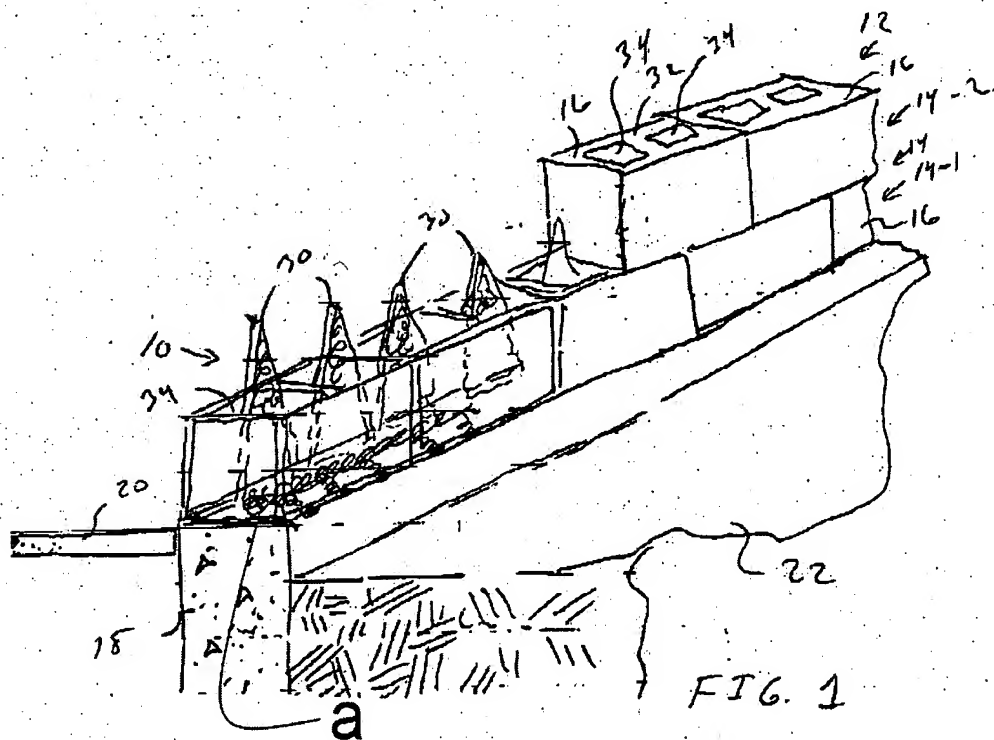
Regarding claims 10 and 20, Sourlis '037 already modified by Sourlis '189 discloses the structure discussed above and further discloses that each said upwardly extending body is texturized (Par 0042).

Regarding claim 40, Sourlis '037 already modified by Sourlis '189 discloses the method discussed above and further discloses that each said upwardly extending body extends into one or more structural elements above said lowermost structural elements.

Regarding claim 41, Sourlis '037 already modified by Sourlis '189 discloses the method discussed above and further discloses that a bottom of the lower transverse cross section of said upwardly extending water-permeable body is in direct contact with said drainage weep hole channel in said upper surface of said foundation wall.

Regarding claim 42, Sourlis '037 already modified by Sourlis '189 discloses the method discussed above and further discloses that each said upwardly extending water-permeable body could be conical in shape (Par 0042).

Regarding claim 43, Sourlis '037 already modified by Sourlis '189 discloses the method discussed above and further discloses that each said upwardly extending water-permeable body could have a truncated pyramidal shape (Par 0042).



Sourlis (US 2004/0182037 A1)

### ***Response to Arguments***

Applicant's arguments filed 5/21/07 have been fully considered but they are not persuasive.

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With respect to claims 1, 11, and 21, as already discussed in the 35 U.S.C. 103(a) rejection above, Sourlis '037 as modified by Sourlis '189 must read on the claimed invention because Sourlis '037 as modified by Sourlis '189 has what is disclosed in Applicant's specification and the element 24 of Sourlis '037 appears to be the same as Applicant's "drainage weep hole channel." As such, Sourlis '037's member 24 which rests on the foundation wall 18 reads on the drainage weep hole channel or provides the drainage weep hole channel and would not constitute a flashing and would be equivalent to Applicant's drainage channel as illustrated in Figure 1 of Applicant's disclosure. As discussed in the 35 U.S.C. 112, 1<sup>st</sup> paragraph rejection above, the drainage channel, as best understood, is either formed at the base of the hollow cell of each masonry block as described in page 20 or that the drainage channel is a separate element in place, (acting like a flashing to facilitate drainage) on a top surface of a foundation wall as shown in Figure 1 (Note that the "drainage weep hole channel" sticks up and out past an edge of the foundation. One would only gather that the drainage weep hole channel is a separate element). Moreover, in response to Applicant's argument that Sourlis '037 in view of Sourlis '189 does not disclose the shape as required by the fourth paragraph of claim 1, Sourlis '037 as modified by Sourlis '189 indeed discloses such as shape (See claim 1 rejection above.)

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CTC/  
8/02/07

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

